1952. P 21 E

File No. O. Stamps/52

Legal Department

A BRANCH

Subject:— Opinions under the Indian stamp Act 1899

File No. O. Stamps/52 193 A

C O N T E N T S.

Legal Department. File No. C.Stamps./52.

Sr. No.	Compilation No.	Subject.	Pages.
		Opinions under the Indian Stamp Act, 1899.	
1.	O.No.1380/29-1-52.	Question regarding levy of Stamps duty in all transactions of Cotton.	1-4.
2.	O.No.1635/1-2-52.	Question whether the Chief controlling Revenue Authority is bound under sec. 57 of that Act to refer a case to the High Court at the request of parties.	5-8.
3.	O.No.1579/29-1-52,	Re: Stamp duty is fixed delivery contract of artificial silk yarn.	9-10.
4.	O.No.823/27-2-52.	G.R.R.D.No.1589/45 of 21-2-52. Re: Reference to High Court under sec.57(1) ~~xxx~~ of	11-16.
5.	O.No.3859/11-3-52.	Indian Companies Act,1913 Sec 34(6). Constitution of India. Art 291(1) and 366(22) Whether the transfer of stores and securities from the name of the ex-Ruler of ~~xxx~~ Baroda to the name of the present Ruler would be exempt from stamp duty and if not whether ~~xxx~~ only a nominal duty can be charged.	17-20.
6.	O.No. 3263/175-52.	Re: Levy of Stamp Duty on certain mortgage deed.	21-22.
7.	O.No.12876/7-8-52.	G.C.D.D.No.C.S.M. 1452 D of 31-7-52 Re: Co-operative Societies. Exemption from stamp duty in receipt passed by	23-[illegible]

DM
26/6

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8.	O.No.3893/28-5-52.	Whether the document styled form of indemnity for foreigners desiring to come to India falls under Act.5(c) and is chargeable with Stamp Duty.	25-26.
9.	O.No. 13314/14-8-52.	Re: Boards demanded from importers of foreign gxxxx goods by the customs officer at the port of Bombay. Whether the Govt. would agree to treat the lands in Question as "customs bonds" and charge them to stamp duty accordingly.	27-28.
10.	O.No.15292/17-9-52.	Question regarding exempting the debentures issued by the Municipalities from payment of the stamp duty.	29-32.
11.	O.No. 15748/24-9-52.	Re: Levy of stamp duty on Will.	33-38.
12.	O.No.18489/6-10-52.	Re: Levy of stamp duty on mortgage deed.	39-40.
13.	O.No.20055/29-11-52.	Question regarding exempting the debentures of the Bombay State Transport Co-operation from payment of stamp duty.	41-44.
14.		R.D.Endt. No.9000/49 d. of 10-8-52. Question G.N.R.D. No.9000/49 10-8-51.	45-48.
15.	O.No.20720/10-12-52.	Re: Transfer of shares Exempting of stamp duty in respect of.	49-50.

On reading article 5(bb) and article 43(aa) of the Schedules to the Stamp Act, as amended by Bombay Act XXXII of 1948, it becomes clear that stamp duty is leviable in case of purchase or sale of cotton for every unit of transaction of part thereof. It makes no difference whether the transaction is in respect of purchase or sale of Indian or foreign cotton. However, the explanation given under the said article, lays down that unit of transaction means 50 bales of cotton, a bale being equal to the quantity of cotton weighing approximately 392 lbs. The contention of the East India Association Ltd. is that as the Egyptian and American cotton bales respectively weigh 720 and 500 lbs. approximately and not 392 lbs. approximately as laid down in the explanation to the above articles, the contracts in respect of these cotton bales are exempted from the operation of the said article. On the other hand the Stamp Office is interpreting the explanation to mean that every agreement relating to the purchase or sale of 19,600 lbs. of cotton or part thereof a Stamp duty of six annas 14(four) annas plus surcharge of 2 (two) annas) is to be paid. There is some force in the contention of the Association because "weighing approximately 392 lbs." is not the same as weighing 720 lbs. or 500 lbs. However it is possible to urge that if the contract is for purchase or sale of cotton then for every unit of transaction (unit of transaction meaning 50 bales of cotton irrespective of the quantity of cotton comprised in those bales) the stamp duty should be levied as laid down in the aforesaid article but it will not be possible to justify the interpretation places on the articles by the Stamp Office. In either case the Government ---

VGP. 16-6-56.

Government will lose considerable revenue in foreign cotton transactions and it is desirable to amend the Articles in a suitable manner so as to justify the interpretation sought to be placed on the by the Audit Office.

Sd. J.R. Dhurandhar.
29/1

O.O.

Additional Secretary to Government.

U.R. to F.D. No.1390. dated the 29th January 1952.

TGP. 16-6-56.

The view taken by the Revenue Department on the first question raised in paragraph 6 of the Revenue Department office note at page 52 is correct. Section 57(1) of the Indian Stamp Act as interpreted by the Supreme Court in the Chief Controlling Revenue Authority v. The Maharashtra Sugar Mills (52.B.R. 789) leaves no option to the Chief Controlling Revenue Authority to state the case for opinion of the High Court when demanded. Consequently it would be obligatory on the Chief Controlling Revenue Authority to state the case for opinion of the High Court when demanded. However, as decided by the Bombay High Court in civil reference No. 4 of 1951, the party who requires the Chief Controlling Revenue Authority to make a reference under section 57(1) of the Indian Stamp Act will have to bear the costs of the reference if he fails but if he succeeds, Government will have ordinarily to pay the costs unless there are special reasons to depart from this rule.

It is true that as a result of the Supreme Court's decision in the aforesaid case references to the High Court under section 57(1) of the Indian Stamp Act may increase but that cannot be helped so long as section 57(1) remains in its present form. "Stamp duties" is a subject falling in the Concurrent List (List III) in the Seventh Schedule to the Constition of India and the Legislative of the Bombay State also has power to amend section 57(1) of the Indian Stamp Act (see article 246(2) of the Constitution of India), but the assent of the President would be required for such amendment (see article 254 (2) of the Constitution). Since section 57(1) of the Indian Stamp Act is a general provision applicable to all the

States in India and is intended for the protection of the minority, it does not seem advisable for one State to change the law by amendment and it seems doubtful whether the assent of the President would be given to the amendment of section 97(1) by the Bombay State.

Sd. P.N.Lal.
1/2/52

S.O.

Remembrancer of Legal Affairs.

U.R. to R.D.No.1635, dated the 1st February 1952.

VGP. 16-8-50.

The statement submitted to the Yarn Merchant's Association by its members does not conform to the definition of a clearing list as appearing in section 2(6) of the Indian Stamp Act, 1899 in as much as it does not contain a list of all transactions relating to contracts for sale and purchase and does not contain a declaration as required by the definition. As the list is not a clearing list within the meaning of the Stamp Act, provisions of Article 20-B will not be attracted and the transactions of futures sale and purchase cannot be taxed separately. The contracts in relation to these transactions will, however, be chargeable under Article 5(be).

There is no provision in the Indian Stamp Act, 1899 by which Government can require the Association to prescribe a form as will conform to the definition of clearing list appearing in the Stamp Act. Government has power to require Recognised Associations to amend their articles and Bye-laws under the provisions of the Bombay Forward Contracts Control Act, 1947. F.D. may consider the feasibility of taking steps under this latter Act.

Sd. J.R.Dhurandhar.
29/1

S.T.

Additional Secretary to Government.

U.R. to F.D.No.1570 dated the 29th January 1952.

VGP. 16-6-56.

Transfer of Shares and securities to the name of the Present Ruler of Baroda.

Constitution of India. Arts.291(1) and 366(22) and

Indian Companies Act, 1913 s. 34(6).

The question raised for the R.L.A.'s consideration is whether the transfer of shares and securities from the name of His Highness Sir Pratapsinh Gaekwar, ex-Ruler of Baroda, to the name of the present Maharaja of Baroda would be exempt from stamp duty and if not, whether only a nominal duty can be charged.

It is presumed that the shares and securities which are held by Sir Pratapsinh are held by him qua a Ruler. "Ruler" in relation to an Indian ~~xxxxxxxx~~ State, as defined in article 366(22) of the Constitution of India means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 291 was entered into and who for the time being is recognised by the President who for the time being is recognised by the President as successor of such Ruler. The present Maharaja of Baroda has been recognised by the President as successor of His Highness Sir Pratapsinh Gaekwar,. Consequently, the present Maharaja would be necessary to entitled~~xxxxxxx~~ ~~xxxxxx~~ to the shares and securities which have been held by Sir Pratapsinh qua a Ruler. No transfer deed would be necessary to entitle the present Maharaja of Baroda to these shares and securities. Besides, under sub-section (6) of section 34 of the Indian Companies Act, 1913, the company is given power to register as share-holder any person to whom the right to any shares has been transmitted by operation of law. The Articles of Association usually contain separate provisions for the transfer by the act of parties and by transmission by operation of law. Since the new Maharaja of Baroda is entitled to the shares held by the ex Ruler of Baroda by operation of law, no

transfer deed would be necessary. Securities may consist of Government promissory notes and stock certificates. Government promissory notes can be transferred by an endorsement on the back of the note and no transfer deed would be necessary and such endorsement would be exempt from stamp duty. In the case of Stock certificates also, the transfer deed is exempt from stamp duty (Securities Manual p.119). In the circumstances, no question of stamp duty xxx would arise in the case of Government securities even if Sir Pratapsingh executes a transfer. Moreover, it is presumed that the Public Debt Office can set suo motu and effect the necessary transfer in view of the succession of the new Maharaja to the gadi. In view of these circumstances, the question of levy of a nominal stamp duty for the transfer does not arise.

Sd. P.N.Lal.
12/3.

C.C.

Remembrancer of Legal Affairs.

U.O. No F. & S.D.No.3830 dated the 11th March 1953.

VGP. 16-6-56.

No. 8263
Legal Department.
Bombay Castle (Bombay No 1.) 17th May 1952.

To

The Chief Controlling Revenue Authority,
Bombay.

Subject :- Equitable Mortgage Rs. 75,000/- dated 23-8-51.
Ramchhoddas Karsondas to - Ranchhoddas
Abji & Anr.

Sir,

With reference to your letter No. 2424/5, dated the 15th March 1952, on the above subject, I have to observe as follows:-

The question for consideration is whether clause 2(b) of the Memorandum dated the 23rd August 1951 by which the Mortgagor agrees to pay all costs charges and expenses incurred by the Mortgagees in connection with the security as well as for the protection and security of the lands comprised in the document creates any interest in property so as to make the document liable to Stamp-duty as a Mortgage under Article40(b) instead of an Agreement relating to deposit of titles deeds chargeable under Article 6 in the first Schedule to the Indian Stamp Act, 1899.

Clause2 2(b) is the usual cevenant on the part of the Mortgagor indemnifying the Mortgagee against the expenses incurred in connection with the protection of the security. As laid down in 9 Bom. 435, the obligation is an inherent obligation and an express provision is superflous. Since an Agreement relating to deposit of title deeds under the Indian Stamp Act is an equitable mortgage under ordinary law any express provisions of the rights of an equitable mortagage under ordinary law cannot have the effect of converting the document into a mortgages. In any case it is very difficult to contend that clause 2(b) has the effect of creating an interest in property. It is the result of the entire document and the transaction edidenced therein.

The Advocate General is at present out of Bombay and it is not possible to obtain his opinion. However, in view of the difficulty experienced in distinguishing between an equitable mortgage and a simple mortgage you may refer the matter to the High Court for assessment of the liability of the document as a whole and not only by virtue of clause 2(b) only.

Yours faithfully,

Remembrancer of Legal Affairs.

VGP. 26-6-56.

The view taken by the Superintendent of Stamps is correct. In a bond the penalty is the primary part of the instrument to which the agreement the performance of which avoids the penalty is subsidiary. A bond creates an obligation so that the breach of an obligation under a bond does not sound in damages. The instrument in the present case is an agreement to make good any loss which Government may suffer by reason of acting on the recommendation of the executants and in the event of their failing to carry out the undertaking. This instrument does not create a any obligation to pay a specific sum of money so that such sum cannot be treated as the primary part of the instrument, and what is more, it provides for compensation in respect of loss caused or expenses incurred by reason of the default of the executants which means compensation in damages. It is for this reason that the instrument must be distinguished from a bond. It is an agreement. At the worst it can be treated as an agreement with a penal clause. Even then it will not be liable as a bond. The mere fact that it is attested would not make any difference.

The R.L.A. would like to add that provision should be made in the agreement that all monies due thereunder shall be recoverable as arrears of land revenue as, otherwise, the only remedy for recovery would be protracted litigation.

Sd. P.M.Lad.
27/5

e.e.

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No.8893 dated the 28th May 1952.

VGP. 16-6-56.

The view taken by Superintendent of Stamps is correct. The expression "customs" means duty levied upon imports from foreign countries. The Statute dealing with the subject is Sea Customs Act, 1879. The Imports and Exports (Control) Act, 1947, is an act to prohibit, restrict or otherwise control exports and imports and has nothing to do with the payment of duty. The fact that penalties under the Act are to be the same as under th the Sea Customs Act does not make any difference. It is for the administrative department to consider whether the duty on such bonds should be remitted under section 9 of the Stamps Act ex so as to become chargeable under article 26.

Sd. P.M.Lad.
12/8

e.e.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 13314, dated the 14th August 1952.

VGP. 16-6-56.

R.I. NO. 20568/3-9-52.

Submitted.

The Borsad and Kaira Municipalities have requested the Government to exempt the debentures issed by them from payment of the stamp duty and if it is not possible to do so to ~~compound~~ compoundound the stamp duty to least amount.

S. R.D. states as follows :-

"According to section 8(1) of the Indian Stamp Act, read with the Bombay Act No. XIV of 1943, stamp duty at the rate of Rs. 1-8-0 per cent of the total value of debentures is chargeable. Section 9 of the Indian Stamp Act was amended by Adaptation of Laws Order, with effect from 26-1-50, and now the State Govt. is no longer competent to remit the stamp duty or to compound the duties payable on such debentures under section 8(1 of the Act. The Borsad and Kaira Municipalities have commenced to issue debentures from 30-9-44 and 1-4-47, resply. The Borsad ~~munix~~ Municipality has paid the stamp duty of Rs. 996-0-0 for these debentures issued worth Rs. 66,400/-. On 5-1-45 . The Kaira Municipality has paid the stamp duty of Rs. 1,009-8-0 for debentures worth Rs. 67,300/- on 14-10-50 and 8-10-51. Thus the liability to apy stamop duty on the debentures issued by these two Municipalities arose before 26-1-50. This Govt. is not therefore competent to remit or compound the stamp duty on these debentures."

The R.L.A. is requested to advise -

VGP. 18-6-56.

Office of the R.L.A.

The view taken by the Revenue Department is correct.

Sd. P.M.Lad.
16/9

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15292/E dated the 17th September 1952.

VOP., 16-9-52.

Submitted.

The facts of the case are as follows :-

Shri Laxmappa Siddappa Talewad of Jambagi-Khurd in Mudhol District Bijapur executed a Will on 20th September 1940, appointing four persons as Managers of his estate and directing them to manage, dispose of, and distribute his estate in the manner stated in the said Will, after the death of the Testator. At the request of the said Laxmappa , the executant of the said Will, the Sub-Registrar of the ex-state Mudhol visited the house of the said Laxmappa and registered the said document as a Will and recovered a fee of Rs. 31-14-0 for the executant in this connection.as follows :-

1.	Registration charges	Rs. 8-0-0
2.	Visiting charges.	" 10- 0-0
3.	Registration charges.	" 10-0-0
4.	Copying fees.	" 3-8-0
5.	Postage.	" 0-6-0
		-- Rs. 31-14-0

Subsequent to the said registration of the document the Sub-Registrar on a closer scrutiny of the said document adjudged it a Deed of Settlement, impounded the said document and sent a notice of demand for a total amount of Rs. 661/-as follows:-

1.	Registration charges.	Rs. 238-0-0
2.	Visiting charges.	" 2238-0-0
3.	Stamp duty.	" 180-0-0
4.	Penalty.	" 5-0-0
		- Rs. 661-0-0

In the meanwhile the said Laxmappa, died and on the application of one of the trustees under the said document the Nazir of the ex-Mudhol state was appointed guardian of the son of the said Laxmappa, Shivshidhappa Laxmappa.

That the Nazir of the Ex-Mudhol State on receipt of a notice from the State Authorities for the payment of Rs. 661/- as stamp duty, penalty, registration and visiting charges as hereinabove stated, applied against the said levy. But as by that time the State of Mudhol had merged into the Indian Union; the said Nazir was told to apply to the Government of Bombay as an appeal against the order of the State Commissioner lay to the Govern.— ment only.

On the integration of the State of Mudhol into the District of Bijapur, the Deputy Nazir, District Court of Bijapur came into the management of the properties under the said Will as guardian of the said minor Shivashiddhappa and a similar notice dated 6th April 1950 for the payment of the said amount of Rs. 661/- was served on him.

2. The Deputy Nazir, District Court Bijapur has therefore applied to the Govt. for remission of the levy of Rs. 661-0-0 charged by Sub-Registrar, Mudhol and for the just and correct assessment of the duties chargeable on the said document.

3. The Inspector General of Registration is of the opinion that the document in question is only a Will and as such recoveries may not be made. The Supdt. of Stamps considers that the document is not one of partition. The R.L.A. is requested to advise.

VGP. 16-6-56.

The view taken by the Inspector General of Registration, Bombay, is correct.

Sd. P.N.Lad.
22/9.

o.c.

Remembrancer of Legal Affairs.

M.R. to R.D. No.15748/E dated the 24th September 1952.

VGP. 16-6-56.

No. 184896

Legal Department.

Bombay Castle, (Bombay No.1), 6th November 1952.

To

The Director of Fisheries,
Bombay.

Subject:- Mortgage Deed executed by Shri Budha Dama Mangela of Nargol.

Sir,

With reference to your letter No. F.41(A)/VII-32/ 15134, dated the 1st November 1952, on the above subject I have the honour to state that the question whether the agreement made by the principal debtor and the guarantee given by the surety at one and the same time form one instrument or two for the purposes of the stamp Act was considered by full bench in Dawlatram Narji and another vs. Vitha Radhoji and another (5 I.L.R. p. 186) which held that the contract of the surety being incidental and necessary to that of the principal and in respect of one and the same sum or consideration, the bond together with the guarantee written on one stamp paper constituted only one instrument.

In Stead vs. Liddard (Tilsley on Stamps 3rd ed. p.302) it was held that the fact that the contract of the principal appears separately on the instrument from the contract of the surety does not render two stamps necessary.

The wording of the surety bond in the present case also shows that the surety bond forms a part and parcel of the principal mortgage deed and related to the same transaction specified in the Mortgage Deed. No separate stamp duty for the surety bond therefore seems necessary. The view taken by the Superintendent of Stamps does not appear to be correct.

Yours faithfully,

Sd.

e.c.

Solicitor to Government.

VGP. 16-6-56.

If Government, who is a party to the instrument of debenture, agrees to bear the stamp duty, a clause to that effect may be added in the debenture itself and it will be exempt under clause (1) of the proviso to section 3 of the Stamp Act.

Sd. P.M.Lad.
28/11

o.c.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 20055/A dated the 29th Nov. 1952.

VGP. 16-6-56.

Transfer of shares.

Indian Stamp Act, sec. 9(2)(a). & R.L.A's opinion No. 3839 dated 11-3-1952.

The view taken by R.D. that if it is proposed to grant exemption in respect of Stamp duty on transfer of shares, debentures etc. then the requisite order or firman will have to be issued by the Central Government, is correct (vide section 9(2)(a) of the Stamp Act). Attention is, however, invited to R.L.A's opinion No. 3839 dated 11th March 1952, wherein it has been pointed out that no transfer deed will be necessary in the present case as the transfer is ~~xxxxxxxxxx~~ by law and not by act of the parties. The transfer forms submitted by Messrs. Mulla and Mulla have been filled in as if the transfer is by act of parties. This is not correct. It is not clear whether the Articles of Association of the various companies the shares of which are proposed to be transferred ~~by~~ do not contain separate provisions for transfer by operation of law. If they contain such provisions, the present forms would be inappropriate. Government may, therefore, request Messrs Mulla and Mulla to ascertain and state whether the Articles of Association do not contain provisions for the transfer of shares by operation of law which would dispense with the necessity of making of transfer by filling in transfer forms submitted by them to Government which appear to be useful only when the transfer is by ~~xxxx~~ act of parties.

Sd. P.M.Lad.
9/12

Remembrancer of Legal Affairs.

U.R. to F.& S.D.No. 20720/A dated the 10th December 1952.

VGP. 26-6-56.